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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,561	12/05/2001	Yin-Ming Li	1797-0160001	3573
7590 05/04/2004				
Sterne Kessler Goldstein & Fox 1100 New York Avenue NW Suite 600 Washington, DC 20005-3934				
			EXAMINER IBRAHIM, MEDINA AHMED	
			ART UNIT 1638	PAPER NUMBER
DATE MAILED: 05/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/856,561

Applicant(s)

LI ET AL.

Examiner

Medina A Ibrahim

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 16 March 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): 102 (b) rejection to claims 1-4, 7-9, 11-13 and 16.  
4. ☒ Newly proposed or amended claim(s) 6, 10, 14 and 15 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: 6, 10, 14 and 15.Claim(s) rejected: 1-5, 7-9, 11-13, 16 and 17.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_  
10. ☐ Other: See Continuation Sheet

  
**ASHWIN D. MEHTA, PH.D**  
**PATENT EXAMINER**

Continuation of 5. does NOT place the application in condition for allowance because: arguments regarding 112, 1st paragraph rejection to 1-4, 7-9, 11-13 and 16 ; and the art rejection to claims 5 and 17 are duplicatives of what have been already addressed.

Continuation of 10. Other: Applicant's arguments on page 10, 1st and 2nd full paragraphs to overcome the art rejections support the rejection under 112, 1st paragraph. *Caerulescens* G15 accumulated more cadmium than *Caerulescens* G15 under identical soil conditions, and therefore the arguments support Examiner's position that hyperaccumulation is strongly genotype dependent and varies within species.